IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1117 OF 2002

Shree Satish Prabhakar Padhye
Age 51 years
Occ: Nil
Residing at 10, Shantibramha Society
104 Dahanukar Colony, Lane No.3
Kothrud, Pune-411 029. ...Petitioner

Vs.

1. Union of India
   Through the Secretary
   Ministry of Law
   Justice & Company Affairs
   (Legislative Department)
   having its office at New Delhi.

2. Minister Of State for Social Justice
   and Empowerment (Independent Charge)
   Shashtri Bhawan, New Delhi-110001.

3. State of Maharashtra
   Through the Secretary
   Department of Social Welfare
   Cultural Programmes and Sports,
   Having its Office at
   Mantralaya, Vistar Bhavan
   Mumbai 400 032.

4. Commissioner for the Welfare
   of Disabled Persons, having
   His Office at 3, Church Lane
   Pune 411 001. Maharashtra.

5. Dalco Engineering Private Ltd.
   (A Company incorporated under
   the Companies Act, 1956) having
   its Registered Office at
   H.A.Ltd. Compound, Pimpri,
   Pune 411 018. ...Respondents

Mr. Amogh Paralikar, Adv. for Petitioner
Mr. Suresh Kumar, Adv. for Respondent Nos.1 & 2
Mr. S.R. Nargolkar, A.G.P. for Respondent Nos.3 & 4
Mr.Deshmukh with Mr. A.V. Anturkar for Respondent No.5

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.

DATE OF RESERVATION OF JUDGMENT : 12.8.2005
DATE OF PROUNCEMENT OF JUDGMENT : 23.12.2005

JUDGMENT : (Per Smt.R.S. Dalvi, J.)

1. The Petitioner is a person with hearing disability who has acquired his disability consequent upon and during his service with Respondent No.5. The Petitioner was a trained Telephone Operator working as such with Respondent No.5 for 23 years. Respondent No.5 are in the business of manufacturing industrial equipments and the Petitioner was posted in their factory. He was not provided with a soundproof cabin. The Petitioner contends that he worked under extremely noisy surroundings in the 5th Respondent's factory. It is his case that due to constant loud manufacturing sounds his sense of hearing became gradually impaired and he had to undergo medical treatment ultimately leading to the termination of his services by Respondent No.5. His legal rights to employment under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter, for the sake of brevity, referred to as "the Act") are under consideration in this matter.

2. The Petitioner has relied upon the Certificate of his Physician dated 29th October 1994 showing that he suffers from bilateral sensory neural loss. He was advised not to get exposed to noisy surroundings.

Thereafter, on 17th March, 1998 he has undergone an audiogram which illustrates the hearing loss in decibels as against the frequency in hertz in respect of both his ears. The Audiologist has shown how the Petitioner’s hearing has been impaired. The right ear shows profound sensory neural loss. The left ear shows severe sensory neural loss. A certificate given by another Physician dated 25th March, 1998 shows around 85% deafness. He was certified handicapped for his day-today activities due to his deafness.

3. A subsequent Audiogram dated 10th June, 2000 showed further impairment of his left ear. The Audiologist’s report showed no benefit from amplification. It was advised that the Petitioner should not be doing any job which requires use of only auditory modality. It was further advised that Visual Auditory Modality may be a better option.

4. The Petitioner’s Advocate has explained the two Audiograms of 1998 and 2000. The Amplification showing the frequency in hertz is seen to have been almost complete in the right ear since 1998 itself showing "profound" hearing loss. "Severe" hearing loss in the Petitioner’s left ear in 1998 has deteriorated to "profound" hearing loss in his left ear in the year 2000. The later Audiogram therefore, shows both his ears almost completely damaged. The two audiograms further show that this damage has taken

place over the years and whilst the Petitioner served in the factory of Respondent No.5.

5. The Certificate dated 11th June 2000, Exhibit-E to the Petition shows that the Petitioner suffers from profound sensory hearing loss which is seen to be progressive. It shows that it would be better for the Petitioner to be occupied in work which entails not merely auditory, but visual and auditory requirements. Thus, the Petitioner can be employed to do any work which entails not merely hearing, but hearing as well as seeing requirements.

6. The Petitioner therefore, wrote to Respondent No.5 - his employer on 26th June, 2000 entreating them to transfer him to another section. Instead, Respondent No.5 by their letter dated 1st December 2000 terminated the services of the Petitioner as he was unfit to perform his duties as Telephone Operator without any chance of recovery of the deformity. The termination was notified to be with effect from 31st December 2000.

7. The Petitioner applied to the Disability Commissioner appointed under the Provisions of the Act for being provided a suitable alternate posting as a handicapped person.

8. The Commissioner by his order dated 12th

October 2001, Exhibit-N to the Petition rejected the Petitioner's claim seeking such a transfer and to be given another posting on the ground that Respondent No.5-employer was not covered under the Act. He however, made a suggestion to Respondent No.5 to re-employ the Petitioner on any other work in the Company which he can discharge since the Petitioner was handicapped only in relation to deafness but was in a position to do any other work. He observed that the Rehabilitation of Disabled is to be treated as a Social Responsibility and hence made that suggestion in his order.

9. Respondent No.5 have not headed the suggestion. The termination of the services of the Petitioner has not been set aside. Consequently the Petitioner has filed this Petition challenging the order of the Commissioner dated 12th October 2001 and seeking reinstatement with effect from 31.12.2000.

10. It is the contention of the Petitioner that Respondent No.5 is an "Establishment" covered under Section 2(k) of the Act and consequently in view of the protection of the Act his services cannot be dispensed with. He further contends that he cannot be reduced in rank since an employee who acquires the disability during his service is protected against that under Section 47 of the Act. The Petitioner concedes that he can be shifted to some other post in

the establishment of Respondent No.5 under the proviso to Section 47 or be kept on a supernumerary post until a suitable post becomes available or until he attains the age of superannuation as per the second proviso of Section 47.

11. The Petitioner claims rights and remedies under the aforesaid Socio Economic Legislation. The Legislation has come to be passed in view of and pursuant to the Proclamation On The Full Partition and Equality of People With Disabilities In The Asian and Specific Region (hereinafter referred to as "the Proclamation") to which India was a signatory and consequent upon which the aforesaid Act came to be promulgated. The Petitioner therefore, seeks a reasonable and broad interpretation to be placed on the provisions of said Act with a view to advance justice under it as against a pedantry, narrow interpretation which would frustrate its provisions. This interpretation, it is contended, should bring Respondent No.5 within the sway of the Act, since it is the contention of Respondent No.5 that the Act does not apply to it since it is not a Government undertaking. This contention has been upheld by the Commissioner in the impugned order.

12. The object of the Act is to give effect to the above-referred Proclamation. The Proclamation recognizes the Economic hardships of the disabled

persons and their rights to overcome them through the remedy of a Socio Economic Legislation and obtain opportunities for rehabilitation, education and employment to ameliorate their condition and to enable them to live with dignity and the worth of a human being. The Act is therefore a beneficent legislation, enacted in terms of and in the spirit of the Proclamation which is intended to reach out to all the Disabled Persons in the Asia-Pacific Region in the modes specified thereunder.

13. For determining the applicability of the Act to a given undertaking, the definition of Establishment under Section 2(k) must be first examined. It runs thus:-

> . ‘‘Section 2(k)- "**Establishment**" means a corporation established by or-under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act, 1956 and includes Departments of a Government.’’

14. It can be seen from this definition of an "establishment" that there are 4 types of Establishments which come under the umbrella of the Act. These are Corporations, Authorities of

Government, Local Authority and Government Company. In the present matter, we are not concerned with Government or local authorities or a Government Company, but with the question as to whether Respondent No.5 could be considered to be a Corporation to be covered under the concept of an establishment. The Corporations may be established by and or under an Act. The Act may be a Central, Provincial or a State Act. All such Corporations fall within the definition of the term ‘‘Establishment’’. Respondent No.5 is a Private Limited Company incorporated under the Companies Act I of 1956. Under the Companies Act I of 1956, a Company is required to be formed and registered under that Act as per Section 3(i)(i) to become a ‘‘Company’’. The mode of establishment of such a Company is therefore by Registration. The formation of the Company under Section 12 of the Companies Act I of 1956 is by a minimum number of persons subscribing their names to its Memorandum of Association and complying with the requirements of the said Section in respect of its registration. The registration of the Company takes place after presentation for registration of its memorandum and its articles, if any, and its agreement with its Managing or whole time Director or Manager, to the Registrar of the State in which the Registered office of the Company is to be situated. On the registration of the memorandum of the Company the Registrar of the Companies (ROC) issues a certificate

of its incorporation under Section 34 thereof. The formation of the Company by such registration which is statutarily laid down is therefore a mode of its establishment. Once the Company is formed and incorporated under the Indian Companies Act, it is a Company established under that Act. The Companies Act I of 1956 is a Central Act. All Companies formed and registered thereunder are, therefore, established under that Central Act. The Petitioner contends that all such Companies fall within the sway of the Act under the concept of "Corporation" and, therefore, the term ‘‘Establishment’’.

15. The contention of Respondent No.5 is quite the contrary. Respondent No.5 contends that a Limited Company is not a "Corporation". It is established under the Provisions of Companies Act and it is registered thereunder. It is contended on behalf of the Respondent No.5 that an entity which is incorporated under the provisions of a special Act would alone be a "Corporation" for example a University established under the Maharashtra Universities Act, a State Financial Corporation established under the State Financial Corporation Act etc. Those are Statutory ‘‘Corporations’’. Those are established under such specific Statutes. Companies Act is a general Statute which deals with all kinds of business undertakings and which provides the requirement of their formation and incorporation.

Once incorporated they are issued a Certificate of incorporation by the ROC.

16. That apart, it is further contended on behalf of Respondent No.5 that a Company is not directly established under the Companies Act but its provisions are only enabling provisions. Such contention is entirely erroneous. A Company which is a Body Corporate can be established only by strict compliance of the provisions relating to its formation and thereafter its registration. Once founded and registered it becomes an Incorporated Company which is a separate Legal Entity.

17. It may be mentioned that the Government Company defined under Section 617 of the Companies Act, 1956 has been specifically set out and covered under Section 2(k) of the Act. The statutory Corporations such as the two illustrations given above by Respondent No.5 are not so included under Section 2(k). Consequently the first limb of Section 2(k) which covers "a Corporation established by or under a Central, Provincial or State Act" would take within its fold not only a Statutory Corporation but also a Registered Company. If the intention of the Legislature was to exclude all Incorporated Companies, the first clause would have mentioned specifically a Statutory Corporation just as it specifically includes a Government Company.

18. Our attention has been drawn by the Petitioner to the judgment in the case of **Hakam Singh V. Gammon (India) Ltd., A.I.R. 1971 SC 740** which deals with the question of jurisdiction of a Civil Court in those cases in which cause of action would accrue within the jurisdiction of more Courts than one. The Court held that under the explanation to Section 20 of the C.P.C. the term "Corporation" was held to include not only a Statutory Corporation but a Company registered under the Companies Act. The object of that provision was to cover as many suits as possible which can be filed against Corporations registered within the jurisdiction of one of the Civil Courts when the cause of action arises within the jurisdiction of more than one Court. This lends support to the submission that the phrase " Corporation "Established" under any Act" used while defining an Establishment would include a limited Company.

19. Whether or not a private limited Company such as Respondent No.5 can be included in the term ‘‘Establishment’’, can be seen further upon reading the Act as a whole.

20. Definition of ‘‘**Employer**’’ in Section 2(j) is thus :-

. ‘‘Employer’’ means:-

.(i) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

.(ii) in relation to an establishment, the Chief Executive Officer of that establishment.

21. It is therefore seen that there is a distinction between a Government Undertaking and other Establishments. These other Establishments could be interalia Companies established under the Central Act namely Companies Act.

22. Further the term "Appropriate Governments", "Appropriate Governments and Local Authorities", "Establishments" are used under separate provisions of the Act denoting the applicability of those Provisions either to the appropriate Governments or the appropriate Governments and Local Bodies or even other Establishments.

23. Chapter IV, V, VI, VII, VIII, IX and XIII make separate provisions in that behalf. It will be material to refer to their salient provisions separately.

.(a) Under Chapter IV which deals with Prevention and early detection of

disabilities, the Appropriate Government and Local Authorities are enjoined to take certain steps for such prevention.

.(b) Under Chapter V which deals with Education the Appropriate Governments and Local Authorities are enjoined to provide free education to the disabled children and also to make certain scheme for Informal education, Research and Training Institutes.

.(c) Under Chapter VI which deals with Employment, the Appropriate Governments are required to identify posts in Establishments which can be reserved for persons with disabilities and review such posts. Similarly the Appropriate Government is enjoined to reserve atleast 3% of posts for persons with disabilities.

. The Appropriate Governments and Local Authorities are required to formulate schemes for aspects of employment and all Government Educational Institutions and other Educational Institutions receiving Aid from the Government are to reserve 3% of the seats for them.

.(d) Under Chapter VII, which deals with Affirmative Action, the Appropriate

Governments are required to provide appliances to persons with disabilities whereas the Appropriate Governments and Local Authorities are to frame Schemes for preferential allotment of lands on concessional rates and Schemes for provisions such as housing, setting-up business, recreation centres, Special Schools, Research Centres and Factories for persons with disabilities.

.(d) Under Chapter VIII, dealing with Non-discrimination, the Establishments in Transport Sector are required to take special measures in certain Public Transports and in toilets. Further the Appropriate Governments and Local Authorities are enjoined to provide for certain signs and symbols on roads for the disabled. This chapter includes Section 47 under which no Establishment can dispense with or reduce in rank any employee who acquires a disability during his service.

.(e) Under Chapter IX which deals with Research and manpower Development, the Appropriate Governments and Local Authorities are enjoined to promote and sponsor Research under certain specified areas. Only the Appropriate Governments are enjoined to provide financial assistance to Universities

and other Institutions of learning for Special Education, Rehabilitation and manpower Development required for the disabled.

.(f) Chapter XIII deals with Social Security. The Appropriate Governments and Local Authorities are enjoined to undertake Rehabilitation of the disabled and grant financial assistance to NGOs. Only the Appropriate Government is required to frame an Insurance Scheme for benefit of its employees with disabilities to frame a scheme for grant of Unemployment Allowances to them.

24. It would be useful to set out the specific Statutory Mandate upon the Governments, the Local Bodies and the Establishments in a tabular form for easy reference:-

Sr.No.	Chapter No.	Subject	Section of the Act	Particulars of the liabilities
1.	IV	Prevention and early detection of disabilities	25	Appropriate Govt. & Local Authority
2.	V	Education	26 & 27	Appr.Govt. & Loc.Auth.
3.	VI	Employment	32 & 33	Appr.Govts.
			38	Appr. Govts.& Loc.Auth.
			39	Govt. Edl.Instns.&

				& Aided Edl.Instns.
			40 & 41	Appr.Govts.& Loc. Auth.
4.	VII	Affirmative Actions.	42	Appr.Govt.
			43	Appr.Govts.& Loc. Auth.
5.	VIII	Nondiscrimi--nation	44	Establishment in Transport. Sector.
			45 & 46	Appr.Govts.& Local Auth.
6.	IX	Research & Manpower	47	Establishments
			48	Appr.Govts.& Local Auth.
7.	XIII	Social Securities	66	Appr.Govts.& Local Auth.
			67 & 68	Appropriate Governments

Hence it can be seen that only the Appropriate Governments have the specific Legislative Mandate upon themselves to initiate Research (Section 28), Set up Teachers Training Institute (Section 29), Appropriate Education Scheme (Section 30), Identify posts (Section 32), Reserve the posts (Section 33), provide aids and appliances to persons with disabilities (section 42), frame Insurance Scheme for its employees with disabilities (Section 67) and frame a Scheme for payment of unemployment allowance to persons with disabilities who though registered on the Special Employment Exchange would not be gainfully employed for more than 2 years. It must be appreciated that this Legislative Mandate can be made only upon the

State.

25. For several other aspects under this Act where Municipal Bodies can also contribute their might, the Legislative Mandate is fixed not only upon the Appropriate Government but upon Appropriate Government and Local Bodies. These relate to taking steps for prevention of occurrence of disabilities (Section 25), providing education as well as schemes for Informal Education to the disabled (Sections 26 & 27), formulating schemes for Insurance to employees or persons with disabilities (Section 38), reserve 3% in Poverty Alleviation Schemes (Section 40), provide incentives to employees both in public and private sectors to ensure atleast 5% of their employment is made available to persons with disabilities (Section 41), frame schemes for allotment of land at concessional rates for specified activities for the disabled (Section 43), provide for facilities on the roads (Section 45) provide for an environment conducive to the disabled (Sections 46), promote and sponsor Research in various areas for the disabled (Section 48), undertake rehabilitation of the disabled and grant financial assistance to NGOs (Section 66).

26. It can be easily seen that all the social schemes are to be undertaken by both the Appropriate Government and Local Bodies whereas the provisions of infrastructural finance is left only to the

Appropriate Governments.

27. All Educational Institutions are required to provide **amanuensis** to blind students (Section 31). Similarly all Government and Aided Educational Institutions are required to reserve 3% of the seats for the disabled (Section 39). Further all the Establishments in the Transport Sector are required to provide amenities in Railways, buses, vessels and aircrafts and adopt their ramps for easy access to the disabled (Section 44). It may at once be mentioned that the Establishments in the Transport Sector are private and public Establishments. Section 44(a) deals with interalia buses which are owned by the private sector also and to whom the Legislative Mandate would squarely apply. Similarly aircrafts may be owned by private as well as public sector undertakings, both of which are equally liable to provide facilities for the disabled under the Legislative Mandate.

28. Further all the Establishments are enjoined not to dispense with or reduce in rank any employee who acquires a disability during his service (Section 47). It is upon this Section that the Petitioner claims his legal rights. This Section 47 of the Persons with Disabilities Act, 1995 reads as follows:-

" **47. Non-discrimination in Government**

employment. (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

29. Under the proviso to this Section the employee acquiring disability may be shifted to some other post with the same pay scale and service benefits if the

post already held by him becomes unsuitable for him upon the acquisition of the disability. Under a further proviso to this Section if the employee cannot be so adjusted he is required to be kept on supernumerary post until his superannuation. Further his promotion is not to be denied under Sub Section 2 of the said Section. Under the Proviso to Sub Section 2 the Appropriate Government may exempt any establishment from the provisions of that Section having regard to the type of the work of that Establishment.

30. The Scheme of the Act is therefore to provide various ways in which the disabled can be given succour and their position can be ameliorated. The responsibility for these provisions is fixed upon the various Institutions and Agencies, Government and Non-Governmental as laid down in various Sections.

31. What is important to note is that though there is no Mandate upon every Establishment to employ disabled persons and though the reservation of posts is only to be made by the Appropriate Government, every Establishment is required to continue the service of the employees already in employment of these Establishments as per these provisions

32. Under Section 41 of the Act, the Appropriate Governments and the Local Authorities are required to

provide incentives to employees both in public and private sectors to ensure that atleast 5% (five per cent) of their workforce is composed of persons with disabilities. That provision contemplates bringing the private as well as public sectors into the arena of the Act. It therefore contemplates employment of the disabled in both the public and private sectors.

33. We have to look to Section 47 in this background. The first proviso to Section 47 shows the reasonableness of the Legislation and the convenience of its enforcement. An Establishment is to make provision for shifting the employee who has acquired a disability during his service to another post more suitable to him with the same pay scale and service benefits. By the very nature of this provision, a Sole Proprietary Concern or a Partnership Firm has not been brought under the sway of the Act. This shifting would be possible only in organisation with a somewhat large workforce, and therefore, it applies to "establishments" as defined.

34. Under the proviso to Section 47(2) the exemption to be given by the Appropriate Government to certain establishments contemplates that all those establishments would otherwise fall within the umbrella of the Act. Incentives are required to be provided to both public and private sectors for employing 5% of their workforce who are disabled

under Section 41 of the Act.

35. One solitary provision contained in Section 31 further gives a clue that the applicability of the Act extends beyond Governmental Organisations. Under that Section all Educational Institutions (be they public or private) are mandatorily required to provide or cause to be provided amanuensis to blind students and students with low vision.

36. Another specific, stark distinction in the Act is in the Chapters VII and VIII relating the affirmative action and non-discrimination. Whereas the positive, affirmative action is required to be taken only by the Appropriate Governments and Local Authorities, the duty of non-discrimination is imposed upon all Establishments for Providing facilities for the disabled in Transport as well as for allowing the continuation of employment of persons already employed by the Establishment and acquiring disability during service. There is therefore a sound distinction between the liability in taking mandatory positive steps which is only to be shouldered by the State and the Local Authorities, whereas the lesser responsibility of providing facilities and continuation of service and non-discrimination is required to be shouldered by all the Establishments.

37. Consequently it is seen that the Act applies

to various Sectors including Establishments which need not be only Governmental Organisations. The application of the Act extends to all Educational Institutions, all Establishments in the Transport Sector and all Establishments which have already employed persons who acquired disability during service. These Educational Institutions or Establishments may be in the private or public sectors. Some of these Establishments can be exempted by the Government by issuing a special notification. Besides incentives are to be given to employers in public as well as private sectors employing the disabled. These Employers are the heads of the Department as also the Chief Executive Officer (CEO) of the Establishment. All this goes to show that the Establishments themselves can be both private as well as public, Governmental as well as Local, including a Corporation established under an Act of the Centre or the State. It therefore, excludes only the smaller which would be, at best, sole Proprietary Concerns and Partnership Firms which are not Corporations established under any Acts. Only they cannot be saddled with the liability of providing succour to the disabled.

38. The Corporation such as Respondent No.5 is therefore an Establishment within Section 2(k) of the Act. Though it is not enjoined to appoint a specified percentage of persons who are disabled under Section

33 of the Act, it is enjoined not to dispense with the services of a person who is already employed by that Corporation and who has acquired disability during his service under Section 47 of the Act.

39. In fact the acquisition of the disability during service under Section 47(1) is not specifically required to be a disability acquired as an exigency of the employment as in the case of the Petitioner.

40. The case of the Petitioner therefore, goes further on humanitarian grounds. Having been employed in the foundry of Respondent No.5 and having had to work without a noise-proof cabin, and having had to discharge his duties as a Telephone Operator only with Auditory Modality usage, which solely caused his disability, the Petitioner deserves, even without the protection of the Act a shift in his posting after having put in about 23 years of service. It is a matter of regret that Respondent No.5-Corporation thinks otherwise.

41. It can therefore be seen that the scheme of the Act encompasses measures to be taken in a wide ambit. It is not confined to the measures to be taken by the State alone. Depending upon the gravity and strength of the measures, the duties and responsibilities are fixed either upon the Appropriate Governments alone or upon Appropriate Governments with

Local Bodies or upon all the Establishments and even all Educational Institutions.

42. The interpretation of the Act which is such a beneficent Socio Economic Legislation is required to be made such as to enhance its purport and object and make it available to all the disabled persons who would be beneficiaries under the Act.

43. The Advocate for the Petitioner has drawn our attention to various Judgments relating to such interpretation of other Socio Economic Legislations. In the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation reported in A.I.R. 1986 S.C. 458, the principles of such interpretation are laid down thus:-

> . ‘‘Words occurring in statutes of liberal import such as a social welfare legislation and Human Rights’ legislation are not to be put in procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the ‘colour’, the ‘content’ and the ‘context’ of such statues.

(We have borrowed the words from Lord Wilberforce's opinion in Prenn Vs. Simmonds, 1971 (3) All ER 237). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surendra Kumar Verma Vs. Central Govt. Industrial Tribunal-cum-Labour Court, we had occasion to say ''Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.''

44. Such liberal construction of expressions in such Statutes, as against literal construction, requires the Court to include within the definition of the term "Establishment", all the Corporations which are Bodies Corporate Established either by or under either a Central, Provincial or a State Act including the Indian Companies Act I of 1956. It may be mentioned that only such Corporations in the Transport

Sector would require to provide the facilities mentioned in Section 44 of the Act which are required to be within the limits of their economic capacity and development. Similarly such Corporations would be required to continue providing employment to those who were employed with them and thereafter acquired disability either in the same post or by shifting them to any other posts with the same pay scales and service benefits except if they are exempted by the Appropriate Government, regard being at to the type of work in that Corporation.

45. The interpretation of the Dowry Prohibition Act which is also a Social Legislation has been similarly given by the Honourable Supreme Court in the case of **S. Gopal Reddy Vs. State of Andhra Pradesh reported in A.I.R. 1996 S.C. 2184** drawing on the observations made in the earlier Supreme Court Judgment in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. reported in A.I.R. 1987 Supreme Court 1023. It was observed that the Statute is best interpreted when we know why it was enacted and when the statute is looked at without the glasses provided by the context. The observation quoted in that Judgment runs thus :-

> . ‘‘ With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each

word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.''

46. For interpreting a particular word in a judgment the observations of Lord Denning in the case of Seaford Court Estates Ltd. Vs. Asher reported in 1949 to All ER 155 (CA) cited in the aforesaid Judgments (supra) deserve to be looked into. Those observations run thus :-

. ''The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftment of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame

> the draftsman. He must set work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.''

47. It may be mentioned that in the above judgment in the case of **S. Gopal Reddy (supra)** the interpretation of the term 'dowry' in Dowry Prohibition Act, included the giving and taking of dowry before the marriage. The narrow interpretation that the Act did not apply until the boy and girl became the bridegroom and bride respectively was not taken. Upon the meaning of 'dowry' being considered as property or valuable security given or agreed to be given either directly or indirectly, it was held that the expression must be liberally construed to include

demands made before and after marriage.

48. It can therefore, be seen that the word "Establishment" needs to be interpreted taking into account the intention of the Legislature to provide succour and benefits not only to the few disabled who would be employed in Government services but, as per the spirit of the above-referred Proclamation to take its Sweep to as many as disabled persons in different walks of life and requiring different treatment and facilities in the countries which were signatories to the Proclamation as ours.

49. Mr.Paralikar, learned Counsel on behalf of the Applicant, has further drawn our attention to the Judgment of the Honourable Supreme Court in the case of Regional Executive, Kerala Fishermen’s Welfare Fund Board Vs. M/s.Fancy Food and another reported in AIR 1995 Supreme Court 1620 in which the expression "processing for export" came up for interpretation. It was observed under the Kerala Fishermen Welfare Fund Act that the Dealer would be covered by that expression, since they were concerned with one of the steps leading to the export of fish. That Act was passed to upgrade the then traditional, miserable and pathetic condition of the down-trodden and illiterate fishermen. In keeping with the object of the Act to ameliorate their bad condition one of the processes leading to export which included the function of the

dealers was held to come within the purview of the expression "processing for export". It is in the same spirit that the expression "Establishment" in the present statute would require coverage.

50. In a judgment in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee reported in AIR 1977 Supreme Court 965 Honourable Justice Krishna Iyer has elucidated the opinion of the Honourable Supreme Court under the perspective of "Social efficaciousness". In paragraph 5 of that Judgment whilst considering and striking down the narrow interpretation upon the procedure laid down under the Coal Mines Regulations (1957) by Madhya Pradesh High Court, it has been observed thus :

> . "Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on its sensitized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to the meaning of all legislations. Fragmentary grasp of rules can misfire or even backfire as in this case."

. Upon considering as to how the narrow interpretation resulted in a situation so as "to see

the skin and miss the soul of the Regulation," it was observed that it resulted in over judicialisation which could be subversive of the justice of the law.

51. It has been contended on behalf of the Respondent that the marginal note to Section 47 gives a complete answer to excluding the Petitioner from the purview of the Act. The marginal note is "non-discrimination in Government employment". It is therefore contended that the requirement of not dispensing with the services of an employee who acquires the disability is for employees in Government employment. It can be seen that in this Section the marginal note is entirely out of contest. The Chapter under which Section 47 falls is Chapter VIII on "non-discrimination". The marginal notes to each of the Sections in Chapter VIII begin with "non-discrimination". The Chapter therefore deals with non-discrimination and transport (Section 44) non-discrimination on the road (Section 45), non-discrimination in built environment (Section 46) and non-discrimination in, what is called, "Government Employment" (Section 47). However, the Section itself does not begin with the expression "In any employment under appropriate Government or Local Authority....". It deals with "Establishment". It further deals with mandatory directions for persons already in employment. The proviso of Sub-Section 2 of Section 47 gives power to the appropriate Government to exempt

any Establishment from the provisions of that Section. That proviso therefore, gives a clue to what an Establishment is - it is an undertaking which is not only a Government undertaking. It deals with employment of persons not only therein - otherwise the appropriate Government would exempt Government itself.

52. It may again be mentioned that in this light Section 47 must be contrasted with Section 33 of the Act under the Chapter of "employment". Hence, the mandate for reservation of the posts to the extent of 3% is only for appropriate Government. As against that, the directions for all the persons already employed is for all the Establishments under Section 47.

53. The interpretation of the marginal note and its reading along with the main Section has been considered in a number of Judgments brought to our notice by Mr. Paralikar. In the earliest of those cases it was held by the Privy Council in the case of **Emperor Vs. Sadashiv Narayan Bhalerao reported in A.I.R. 1947 Privy Council page 82** relating to the marginal note titled "Sedition" in Rule 124(a) of Defence of India Rules 1939 it was held that it cannot restrict the contents of the Section. It dealt with whether or not a sketch given by the Appellant Constituted a prejudicial Act within the meaning of those Rules. It was held that the two were different

aspects and one could not restrict another by different expressions in the Rule and its marginal note.

54. Further in the case of Nalinakhya Bysack Vs. Shyam Sunder Haldar reported in A.I.R.1953 Supreme Court, page 148. It has been held that:

> . "**Marginal note cannot control the meaning of the body of the section** if the language employed therein is clear and unambiguous. If the language of the section is clear then it may be that there is an accidental slip in the marginal note rather than that the marginal note is correct and the accidental slip is in the body of the section itself."
>
> (Emphasis supplied)

55. In the Constitutional Bench Judgment in the case of **State of Bombay Vs. Bombay Education Society reported in A.I.R. 1954 Supreme Court 561**, the marginal note of Article 29(2) of the Constitution and its contents came up for consideration. It was held that though the marginal note of the said Article was "Protection of Interest of Minorities", it was held that under Article 29(2) all citizens were conferred a special right for admissions into Education Institutions maintained or aided by the State. Such a

right was not available only to citizens belonging to minority groups as they would then obtain double protection. It was available to all.

56. Similarly it is seen that Section 47 interpreted as above would confer rights upon the Petitioner, notwithstanding the marginal note mentioning only Government employment.

57. Upon such interpretation, there can be no doubt that Respondent No.5 is an Establishment as defined under Section 2(k) of the Act. Consequently Respondent No.5 is enjoined not to dispense with the services of the Petitioner or to reduce him in rank upon his having acquired disability during his service (and in fact he having acquired the said disability during service.) The Respondent No.5 is therefore bound to continue the services of the Petitioner or shift him to some other post with the same pay scale and service benefits in their Establishment. The Respondent No.5 is also bound to disburse the back-wages to the Petitioner from 1st January 2001, the date from which his services were dispensed with.

58. It may be mentioned that any such other post that may be offered to the Petitioner under the legislative mandate by Respondent NO.5 may be identified by Respondent No.5 That would meet the noble and humanist purpose and intent of the

legislation which is itself in terms of the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pasific Regions, which includes our Country. It should be as far as possible a post with equivalent pay and service conditions.

59. Consequently the Petition succeeds. The Judgement and Order dated 12th October 2001 passed by the Disability Commissioner (for welfare of persons with disabilities) Maharashtra State, Pune/63 in Complaint No.9/1963 is quashed and set aside.

60. The Petitioner shall be shifted to a suitable post as identified by Respondent No.5 with the same pay scale and service benefits. Further the Petitioner shall be entitled to be disbursed back-wages from 1st January, 2001 since his termination. This order shall be complied within twelve weeks.

61. There shall be no order as to costs of this Petition.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)